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QUESTION

O F

PREVIOUS CONSENT

DISCUSSED.

By a Gentleman of the Bar.

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Qui consulta Patrum, qui leges Juraque Servat.

D U B L I N :

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THE
AUTHOR
TO THE
READER.

IF the Reader hath a Curiosity to know any Thing of me; he may perhaps receive some Satisfaction, by perusing the following Account.

I am, in Point of Profession, a practising Barrister at Law; and, in Point of Fortune, an independent Country Gentleman. I love and admire the Constitution, both in Church and State; equally disapproving unconstitutional Votes and new Prerogatives: The former
I con-

I consider as Party-Jobbs, of a dangerous Tendency ; the latter, as Errors or Schemes of Ministers, in their Tendency not less dangerous than the former. I am no Partisan nor Party-writer ; in public Matters, not regarding Persons, but Things. I dislike all Opposition to Government, that is not necessary. There is no Opinion I am clearer in, than that the Interests of Great Britain and Ireland are inseparable. And I think we should, with all Readiness and Chearfulness, at all Times, more especially in Times of War, to the utmost of our Abilities contribute every Supply necessary or expedient

(v:)

pedient for Support or Increase
of the Irish Establishment ; to
the strengthening of hisMajesty's
Arms against the common
Disturbers of the World, and
all his other Enemies, foreign
and domestic.

T H E

THE
Q U E S T I O N
O F

Previous Consent, &c.

AS Questions which relate to the King's Prerogative, or to the Property of Money vested in the Crown by Act of Parliament, are, in their Nature, Questions of Law; It seems not improper in a Man of that Profession, to offer his Thoughts upon the Question of previous Consent; lately in Contest, and still open to be revived: The rather, as it is a Question, important in itself; and more so, in its Consequences.

THE Rights and Privileges of the Crown are called Prerogatives: And, by the Laws of these Kingdoms, the Prerogatives of the Crown, like other Rights, must all be grounded upon immemorial Usage (that is to say, Common Law) or Acts of Parliament. It is not alleged that any Prerogative of previous Consent was ever given to the Crown by Act of Parliament: Consequently, if there be any such Prerogative in
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the Crown; it must be wholly grounded on parliamentary Usage.

By the general Usage of Parliament, when Laws are to be proposed which are to affect the King's private Property, his previous Consent is requisite. This Practice hath prevailed for such a length of time, as may perhaps amount to sufficient Evidence of immemorial Usage: And, indeed, it seems to be a Practice highly reasonable. Some Cases there have been, and perhaps may be, so urgent and extraordinary, as to be properly exempted from the general Rule: But, in general, the proposing of Laws to the Prejudice of the King's private Property, without his previous Consent, indicates a want of due Respect for the Crown.

THIS parliamentary Usage of previous Consent, is confined to the private Property of the Crown; which excludes all public Property, vested in the Crown for public Uses. Not so much as a single Instance of any such Usage, in the case of public Property, appears either in the *British* or *Irish* Parliament; that of the *Irish* Session in 1751 only excepted: All the other Instances which have been quoted upon this Subject, clearly relate to the King's private Property: But a single Instance can be of no avail: nor could any number of Instances establish a Right, upon the Foot of Prescription or common Law; unless they comprehended such a length of Time, as might amount to sufficient Evidence of immemorial Usage.

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THIS Doctrine of previous Consent, in the case of public Money vested in the Crown for public Uses, not being supported by Law; some late Writers have argued it upon the Foot of Reason; and have taken much Pains to shew that a Prerogative of this kind would be useful to the Public. Admitting this, in its fullest extent; we cannot thence infer that there is such a Prerogative. The only Consequence to be drawn from such an Admission is, that it might be adviseable in the Legislature to grant such a Prerogative by Act of Parliament; that being the only legal Method of introducing a new Prerogative. To consider this Doctrine upon the Foot of Reason, is in a great measure foreign to the Purpose of the present Inquiry; which is, to discover what the Law is; not, what it ought to be: Yet perhaps it may not be amiss, to make a short digression upon this Head.

THIS Doctrine of previous Consent, in the Case of public Money, seems to have as little Foundation in Reason, as it hath in Law. All that I have ever met with, on that side of the Question, in Pamphlets or otherwise, upon the Foot of Reason, amounts in Substance to no more than this:

“ FROM that Intercourse with foreign Courts
 “ which is carried on by the King and his Ministers,
 “ not by the Commons, the King must
 “ always be supposed to know present, and foresee
 “ future Exigences of Government, much
 “ better than the Commons can possibly do:
 “ And it is often adviseable in the King and his
 B “ Ministers,

“ Ministers, to conceal this knowlege for some
 “ time. Hence it is inferred, that if the Com-
 “ mons should be allowed a Privilege of advise-
 “ ing Applications of public Money remaining
 “ in the Treasury ; they would, in all probabi-
 “ lity, frequently give Advice, inconsistent with
 “ secret Exigences of Government ; which
 “ might often become urgent, when there was
 “ no Parliament sitting, to provide for them :
 “ And that whensoever such Advice is given, it
 “ must lay the King under Difficulties in his
 “ Adminiftration; and bad Confequences to the
 “ Public, may thence be reasonably apprehend-
 “ ed.”

THIS Argument seems to admit of, the four following Answers.

First. THE ordinary Exigences of Government are univerfally known: The Extraordinary, chiefly relate to War; offensive or defensive, foreign or domeftic; and are ufually preceded by Public Circumftances, which cannot fail to alarm the Commons, and guard them againft advising Applications of Public Money, hazardous to the Safety of the Realm. Hence it seems reasonable to conclude, there is no Likelihood that the Commons will ever give improper Advice of this Kind: And if fuch Advice fhould at any Time happen to be given; it muft be fuppofed to arife from fome extraordinary Concurrence of Circumftances. But Laws are adapted to the general Courfe of Things ; and cannot be calculated to prevent all Inconveniencies in extraordinary Cafes. It muft be admitted, that a Privilege of advising Applications of public Money would

would, in general, be usefully exercised by the Commons, who best know the Exigences of their respective Countries, and usually have knowlege, at least, probable Conjectures of the Exigences of Government, and are most deeply interested in public Exigences of all kinds. This being attended to, the Objection to this Privilege will stand thus: It is a Privilege generally useful; but may sometimes be attended with Inconveniences, in extraordinary Cases. To this it may justly be said, there is scarce any part of our wise and admirable Constitution, scarce any Law that ever was or ever can be framed by human Wisdom, which may not be liable to the same Objection.

Secondly. If any important Exigence should happen, which the Commons in general did not foresee; there are always some Men of Influence among them, admitted into the Secrets of Government, who are capable, and cannot be supposed unwilling to prevent that unguarded Advice, which the Advocates for previous Consent apprehend.

Thirdly. If the Commons should happen to advise an Application of public Money, inconsistent with some secret Exigence of Government; and the King refuse to comply with their Advice, his Refusal could not be attended with any Inconvenience, whilst his People continue to have proper Confidence in him: And if they should, at any time, be so unhappy as to want that Confidence; the Inconveniences likely to arise from thence, are not to be prevented by any Laws. If the Blame falls on the Administration; no Inconvenience of any great Consequence can be
thence

thence apprehended : A Want of full Confidence in the Administration hath often happened in Times past ; and, in all Probability, will frequently happen in Times to come ; without bad Consequences of any Moment,

Fourthly. THE Commons, without previous Consent, are allowed to have a Right of giving their Advice, by Way of Address, concerning the Application of public Money. This Right they have always exercised, without Opposition : And it hath not been alleged by the Advocates for previous Consent, that any of our Kings was ever laid under any Difficulty, by Addresses of this Kind ; or that any bad Consequence ever arose from the Exercise of this Privilege. But if a King could incur any Difficulty, in refusing to comply with Advice of his Commons, concerning Application of public Money the ; Difficulties would be as great, and the Consequences as bad in the Case of Address, as in the Case of Heads of a Bill : Nay, the Difficulties, if any, must be greater, and the Consequences worse, in the Former than in the Latter : Because the usual Course of Application, in the Case of Address, is to the King singly in Person, by Intervention of the Chief Governor ; but in the other Case, the Application is to the King in his Council of Great Britain ; consequently the Blame, if any, must naturally fall upon his Council.

It is objected, that Addresses of this Kind do not import any Desire or Advice that the Money addressed for, should be paid out of the Redundancy of former Revenues : And that these
Addresses

Addresſes imply a Promise, that the Money to be applied by the King in Conſequence thereof, ſhall be replaced by a future Grant. And it is ſaid, that the King complies with ſuch Addresſes, in Confidence of this implied Promise. But this is an Objection of no Weight. It would be nugatory and inconfiſtent in the Commons, to deſire that the Money addreſſed for, ſhould be paid out of the Redundancy of former Revenues remaining in the Treafury at the Time of the Addreſs; becauſe ſuch Redundancies are quickly to be blended with the growing Income of the former Permanent Revenues, and alſo with the future Income of the additional Supplies which are granted in every Seſſion, and commence either before or recently after the making of the Addreſs; to wit, at Chriſtmaſs; and the whole is conſidered by the Commons as one aggregate Fund, for the ſame Uſes; as appears from their conſtant Practice of eſtimating the Supplies which are neceſſary to be granted in every Seſſion, according to the Deficiency or Redundancy of former Grants. There is no particular Fund pointed out, in Addresſes of this Kind; nor in the Orders which are given by the King, in conſequence of theſe Addresſes: Therefore, neither the Commons, in theſe Addresſes, nor the King, in his Orders given thereupon, can be ſuppoſed to intend any other than the aggregate Fund, comprehending not only the future Income of the new Revenues and the growing Income of the old, but alſo the Redundancy then remaining in the Treafury; if there happens to be any ſuch Redundancy at that Time: The conſequence is, that every Addreſs of this Kind, which is made

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at a Time when there is a Redundancy, imports Advice touching the Application of public Money remaining in the Treasury: And although the Address be made at a Time when there is no such Redundancy; it still imports advice touching the Application of public Money theretofore granted to the Crown, though not actually received into the Treasury.

As to what is mentioned in the Objection, concerning a Promise supposed to be implied in every Address of this Kind, that the Money shall, at all Events, be replaced by a future Grant; it is a bare Assertion, without the least Evidence or Reason given to support it; and is not to be reconciled to the usage of Parliament, which omits the fulfilling of such supposed Promises. There may, indeed, be some Reason to suppose that a Promise is implied, to make good, for support of the Establishment, any Deficiency in the public Revenues which may be occasioned by the King's complying with such Addresses: But the Practice above-mentioned, of estimating the additional Supplies according to the Deficiency or Redundancy of former Revenues, is full Evidence that the Commons have never heretofore had any Intention, in these Addresses, to replace, by future Grants, the Money which the King should think fit to apply in Consequence of such Addresses; unless a deficiency, for support of the Establishment, should happen to be occasioned thereby.

PREVIOUS Consent, in the Case of public Money, seems to stand not only unsupported by Reason; but in direct Opposition to it. Heads
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of Bills, as transmitted from the Commons, are, both in form and substance, Petitions to the King; and have been so considered by the Legislature; as appears from the stile of many Acts of Parliament. It cannot be denied that the Commons, without previous Consent, have a general Privilege of **Petitioning**, or (to speak in the usual Parliamentary Stile) advising the King in Matters of public Nature; nor can it be denied, that such Advice hath usually been given, either by way of Address or by Heads of a Bill, according as the Nature of the Case required. This Privilege of the Commons, is an essential part of our Constitution: Without it, this Branch of our Legislature would be almost useless. The Exercise of this Privilege was never objected to, in any Case; That of applying public Money in the Treasury, only excepted. But if this Privilege be useful on all other public Occasions; it cannot be otherwise, in applying public Money. No satisfactory Reason hath been yet given, why, in such a boundless Variety of public Affairs, this should be the single Exception.

It seems evident, that a Prerogative prohibiting or suspending the Commons from giving the King their Advice upon any public Occasion, in such Parliamentary Manner or Form as is best suited to the Nature and Circumstances of the Case; until the Ministry think fit to apply for his Majesty's previous Approbation of the Advice intended, or his previous Permission for the Commons to advise him in that Matter; would be a Prerogative highly injurious to the Public; more especially,
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in the Case of applying public Money; the Commons, assembled from all Parts of the Kingdom, having much more extensive Opportunities of knowing how the Redundancies of public Money may be usefully applyed, in the various Improvements which may be made, for promoting Agriculture, Trade and Manufactures, than the King's Ministers can possibly have.

If the Doctrine of previous Consent, in the Case of public Money, hath no support either in Law or Reason; the Consequence is, that this Doctrine, applied to the late Case of 1753, cannot be supported otherwise than by shewing that the whole or a part of the Money then proposed by the Commons to be applied in discharge of the National Debt, was the King's private Property.

THE Question of previous Consent being thus reduced to the Point of Property; it remains now to be considered in that Light only. But first, it may not be improper to observe, that private Property implies an absolute, unlimited Right of Disposal. Whatsoever is, in Reality and Substance, a Man's own private Property, he hath, by the Laws of these Kingdoms, an unlimited Right of applying to whatsoever Uses he thinks fit; provided the same be not injurious to the Public. So far as this Right of Disposal is restrained or abridged by Conditions or Limitations inserted in the Deed or Instrument under which the Title is claimed; so far, the private Property of the Thing is not granted. In a larger and more general Sense of the Word PROPERTY, a Trustee is said to have a Property in the Thing which is granted to him in Trust for the Use or Benefit of others; but a Thing
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so granted, is never said to be the private Property of the Trustee. I have, in the following Inquiry, industriously avoided making Use of the Word TRUST or TRUSTEE in the Case of the Crown; the Powers annexed to a limited Property of this Kind, in the Crown and a common Person, not being similar. A common Trustee is merely ministerial; confined to a few particular Uses, without a Power of preferring one to another; or, if such a discretionary Power be intended him, his Discretion is to be superintended and controled by a Court of Equity: But where a Grant is made by Parliament to the Crown, for public Uses at large; the King hath an uncontrolable, unlimited Right of choosing, out of an almost infinite Variety of public Uses, whichsoever he shall think fit to prefer.

Some late Writers in Favour of previous Consent have said, that the King, by Virtue of what they call a constitutional Trust, is a Trustee, for the Public, of every Thing that is vested in the Crown by Act of Parliament or otherwise. If the Meaning of this be, to destroy all Distinction between private and public Property in the Crown; and thence to infer, that the parliamentary Usage of previous Consent is applicable to the Redundancies of the Public Revenue; it is clearly against Law. There can be no doubt that the King is capable of Property, accompanied with a Right of Alienation, an absolute Right of Disposal to whatsoever Uses, whether public or private, he may think fit. The Validity of the Alienations, made by the Crown, of its antient Demesne-Lands, or of Lands forfeited or escheated, was never disputed in Point of Law. It is equally clear, that the King is capable of having Property vested in him, without a Right of Alienation: the several Duties vested in the Crown, by Acts of Parliament, for Encouragement of the Linen Manu-
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ture,

ture, the in-land Navigation, the Cambrick Manufacture and the Protestant Schools, are all allowed to be of this Kind. Hence it is evident that the Crown, by the Laws of these Kingdoms, is capable of two Kinds of Property; the one, absolute, accompanied with a Right of Disposal to whatsoever Uses the Monarch thinks fit; the other, limited, to be disposed of only for public Uses; and the Question is, under which of these Classes the hereditary Revenue falls. If the Meaning of the constitutional Trust be any thing different from what is above supposed, it hath no Relation to the present Purpose.

This Doctrine of private Property is confined to the hereditary Revenue; although it might, with equal Reason, be extended to the ordinary Supplies granted for two Years in every Session. There is nothing ever inserted in any of the ordinary Revenue-Acts granting these temporary Duties, which can shew that these Grants are intended for public Uses; excepting a Recital in the Preamble, which denotes an Intention for Support of his Majesty's Government, or to that Effect: and there are Preambles to the like Effect, in the principal hereditary Revenue-Acts. There is no Foundation in Law, to say, that the Crown hath a private Property in the one Case, because it is an Estate in Fee; and a public Property in the other, because it is only a Term for Years. The Grant is made to the King, his Heirs and Successors, in the one Case as well as in the other; and the Term for Years is descendible with the Crown, during its Continuance, as the Estate in Fee is, without Limitation of Time; and there is nothing requisite, either in Law or Reason, as Evidence of an Intention in Favour of public Uses, in the one Case more than in the other. I have, indeed, heard it said, that a Power of Alienation is necessarily incident to an Estate in Fee; and that this Power cannot
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be with-held, or restrained, by any Clause inserted in the Grant of such an Estate: But that Doctrine is applicable only to Grants made by private Persons; and was wisely adapted to such Grants, for Encouragement of Trade and Industry; but is, in no Sort, applicable to parliamentary Grants made to the Crown, for public Uses. The Legislature can, without Doubt, create any Kind of Estates, with any Powers or Restrictions they think fit; without Regard to the ordinary Rules of Law, in common Conveyances. Besides, even in the Case of private Grants, where a Thing is granted to a private Person, for the common Benefit of himself and others; the Thing is not to be aliened without the Consent of all the Persons, for whose Benefit the Grant was made: and so it is, in the Case of parliamentary Grants. Where a Revenue is granted by Parliament to the Crown, for public Uses; the Grant is made for the common Benefit of King and People: Therefore, such a Revenue is not to be aliened without Consent of the People; which Consent cannot be had, otherwise than from the Representatives of the People in Parliament.

But the Point of Property, so far as it regards this temporary Revenue, can be of no great Importance; for, as this Revenue is granted but for two Years, it may be abridged from Time to Time, as well as enlarged, whensoever it may be thought proper so to do. And if it should, at any Time, be found necessary to obviate a Claim of private Property therein; it may be granted with a special Appropriation, and a Clause added, that the Redundancy thereof shall be disposed of by Parliament; as hath been practiced, of late Years, by the British Parliament; and as was done by the Irish Parliament, in an Act passed in the third Year of his present Majesty's Reign; by which it was enacted, that the new additional Duties there-

by granted should, in the first Place, be applied to discharge the Interest of the national Debt; and that, in Case of a Redundancy, the same should remain in the Hands of the Vice-Treasurer, &c. to be applied towards Discharge of the Principal, in such Order and Manner as, by any Act or Acts of Parliament thereafter to be made, should be directed.

Before I proceed to consider the several Branches of the hereditary Revenue, it may be proper to observe, that a Right of Alienation is the Essence and Test of private Property; and that whatsoever the Crown hath by the common Law, independent of parliamentary Grants, is, without Doubt, private Property, and consequently alienable; there being no Instance, that I have ever met with, where the Validity of any such Alienation was ever disputed in Point of Law. 'Tis true, there have been many Acts of Parliament in various Reigns, annulling many of these Alienations; which Acts are commonly called Acts of Resumption; but the making of such Acts is a Proof that the Alienations were good in Law, otherwise there would have been no Occasion for Acts of Parliament to annul them.

The Case is quite different, with Regard to parliamentary Grants. The Policy of the common Law, without the Aid of Parliament, had provided amply for the King's private Uses, by the ancient Demefne-lands of the Crown, and the Purveyance for the King's Household. The King also, according to the most prevailing Opinion, was intituled, by the common Law, to the ancient Customs upon Wool, Wool-Fels and Leather; although there be different Opinions upon that Point.

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The parliamentary Grants of *England* were anciently called Aids, and were afterwards called Subsidies: They were often occasional, for the Expences of War: the most usual were Tunnage and Poundage; which Duties were, at first, granted for Terms of Years; but, in Process of Time, they came to be granted for Life. I do not find that these ancient Subsidy-acts are in Print; and I have not an Opportunity of resorting to the Records, in order to see how these Acts are expressed; but it appears from the Law-Books, that these ancient Subsidies in *England* were granted for public Uses.

How the Subsidies were granted in *Ireland*, antecedent to our hereditary Subsidies, cannot appear from the Grants themselves; the ancient Subsidy-acts of this Kingdom previous to that Time, with most others of our ancient Acts, being all lost: But there can be no doubt that the ancient Subsidies here, as well as in *England*, were granted for public Uses. It cannot be supposed that a Nation, where the King never resided, generally embroiled in civil Wars, unable to make sufficient Provision for its own public Exigences, and therefore a constant Burthen on the Crown of *England*; it cannot be conceived that such a Nation, in such Circumstances, could ever have been desired to grant Subsidies for the King's private Use. And this, if possible, will appear still stronger, when it is considered, that no such Subsidies were then demanded in *England*; the private Revenues of the Crown, then being more than sufficient for the King's private Use. Hence, this Consequence is fairly deducible; that any of the hereditary Subsidies which are granted at large, by any of our Revenue-acts, without mentioning the Uses for which these Subsidies were intended, must be understood as intended in the usual Course of former Subsidies; to wit, for public

public Uses ; and cannot be supposed to have been intended for Uses, to which no Subsidy had been ever granted before. It is beyond all Conception, that a Subsidy, so new and so extraordinary in its Kind, could have been granted, without being introduced by some Preamble suited to so extraordinary an Occasion ; or without inserting some Words or other, to distinguish the Purposes of so singular a Grant, from the Purposes of former Subsidies. The Presumption, in this Case, is violent ; and Presumptions of that Kind are, by the Rules of Law, equal to express Proof in all Cases.

Parliamentary Grants for public Uses always are, and, by the Nature of our Constitution, ought to be made to the King ; because he has the executive Power : and where such a Grant is made, without mentioning the Uses, public Uses are implied in the Nature of the Grant ; that being the general Tenor and Import of Grants of this Kind. Where a common Conveyance is made to a private Person, without mentioning the Uses of the Grant ; it is to be understood as conveying the absolute Property of the Thing, to the Use of the Person to whom the Conveyance is made ; unless a contrary Intention appears from something expressed in the Deed, or from the Circumstances of the Transaction : and the Reason is, that such is the general Import of common Conveyances. For the same Reason, where a parliamentary Grant is made to the King, without mentioning the Uses ; it is to be understood as granting a limited Property, for public Uses ; unless a contrary Intention appears : because, such is the general Import of parliamentary Grants. This alone might be sufficient to determine the Construction of all our hereditary Revenue-acts, in Favour of public Uses ; as there is nothing contained in any of them, nor any thing to be collected from the Circumstances attending any of them,

them, which can have the least Tendency to shew an Intention in Favour of private Property: but, as there is something particular to be observed with respect to each of these Acts, sufficient to determine the Question of Property, independent of the general Reasoning above-mentioned; I shall therefore consider them separately.

The first is, the old Act of Poundage, which was made in the 15th of *Henry VII.* Although our Revenue-Acts, antecedent to that Time, be lost; it happens that we have an authentic Account of the Original of this Tax in *Ireland.* By an Act of Parliament made in this Kingdom, in the 14th of *Edward IV.* a military Fraternity, called the Fraternity of *St. George*, was erected; consisting of thirteen of the principal Persons in the Counties of *Dublin, Kildare, Meath* and *Louth*; to whom a certain Number of Horsemen and Archers was assigned, for Defence of the *English* Pale against Rebels: And for the Pay of the Men, which was ascertained by the Act, twelve Pence in the Pound was granted to this Fraternity and their Successors, upon all Exports and Imports; Hides and Wines, and the Merchandizes of the Freemen of *Dublin* and *Drogheda* only excepted. Afterwards, in the 10th of *Henry VII.* an Act of Parliament was made in this Kingdom, which contained a Preamble, reciting that the Poundage granted to the Fraternity of *St. George* had been expended and converted to private Uses, and not in Discharge of the public Service; and therefore granted the same Poundage to the King for five Years; and repealed the former Grant. *Vide Davis's Reports*, 11. b.

This Term of five Years having expired in the 15th of *Henry VII.*; the same Poundage of twelve Pence was then continued and made perpetual, upon all Exports and Imports; Wine and Oyl excepted; with

with a Saving for the Freemen of *Dublin, Waterford* and *Drogheda*. Hence it appears, that this Act of the 15th of *Henry VII* was, in Substance and Effect; nothing more than a Continuation of the former Act; with this minute Difference; that in the Former, Hides and Wine; and in This, Oyl and Wine, are excepted; and in the Former, the Saving extended no further than to the Freemen of *Dublin* and *Drogheda*; and in This, it extends also to the Freemen of *Waterford*. But as the former Grant appears to have been made for public Uses; this Continuation of it cannot be considered in any other Light. It cannot be denied that this Revenue was originally vested in the Crown, for public Uses; the Reason for taking it from the Fraternity of *St. George*, and vesting it in the Crown, being expressly mentioned in the Preamble of the Act of 10th *Henry VII* to be this, that it had been converted by the Fraternity to private Uses, and not in Discharge of the public Service. But where a Revenue is granted to the Crown for a Term of Years, to public Uses, and at the End of the Term is continued by a subsequent Act, without mentioning the Uses; there can be no Pretence to say, that the Continuation of it was intended for Uses, different from those for which it was granted before; unless some Evidence of such an Intention appears, either from the Words of the Act or Circumstances of the Case.

Our other Hereditary Acts were all made in the Reign of King *Charles II*; and are five in Number; to wit, the Excise-Act, the Act of Tunnage and additional Poundage, the Hearth-money-Act, the Act for Ale-Licences, and the Act for strong Waters and Wine-Licences. The four first were all made in the same Session; the last, about two Years after. Of these five Acts, those upon which any large Revenue arises, are the three first; And each of these contains

tains a Preamble, clearly expressing the Intent, for Public Uses. The Preambles of the two first, are here inserted at large in the Margin *. The Preamble of the Hearth-money-Act is inserted afterwards. The two last, to wit, the Acts granting the Duties upon Licences for the retailing of Liquors, were of no great Moment, in Point of Revenue: And by the Title and Preamble of the Act for strong

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* 14 & 15 Car. II. ch. 8. (*viz.* the Excise Act) " The Lords
 " Spiritual and Temporal and the Commons in this present Parlia-
 " ment assembled, in Consideration of the gracious Inclinations and
 " Intentions of your Royal Majesty, for the Good, Quiet and Re-
 " pose of this your Majesty's Realm of *Ireland*, and the great and
 " certain Charge, which for this Cause must and will exhaust and
 " diminish your Majesty's Treasure, without some timely Provision
 " made for Remedy thereof, and withal being very sensible how
 " much it will concern the Peace, Tranquillity and Welfare of all
 " your Majesty's good Subjects, that some certain Revenue be esta-
 " blished for and towards the constant Pay of the Army, and Forces
 " of your Majesty, and for defraying other publick Charges in the
 " Defence and Preservation of this your Majesty's Realm: and con-
 " sidering also that the Manner and Means of raising Moneys by
 " way of an Excise or new Impost, is found by Experience to be
 " the most equal and indifferent Levy that can be made or laid on
 " the People for and towards the Ends and Purposes aforesaid. In
 " all Humbleness, We your Majesty's most faithful and loyal Sub-
 " jects of your Highness's Realm of *Ireland*, do pray and beseech
 " your Majesty that it may be enacted, and be it enacted, &c.

14 & 15 Car. II. ch. 9. (*viz.* the Act of Tunnage and additional Poundage) Recites the old Poundage of 15 Hen VII. and that as the Prices of Goods are incertain, the Subsidy of Poundage cannot be levied in so singular a Manner as the Nature of such an Affair doth require, unless some certain Rates be established by which the said Subsidy may be paid. This Act then establishes a Book of Rates, and certain Rules annexed to the Book of Rates. And immediately thereafter, the Act proceeds in these Words:

" And for the better guarding and defending of the Seas against
 " all Persons intending, or that may intend the Disturbance of the
 " Intercourse of the Trade of this your Majesty's Realm, and for
 " the better defraying the necessary Expences thereof, which other-
 " wise cannot be effected without great Charge, and for In-
 " crease and Augmentation of your Majesty's Revenue, be it further
 " enacted, &c."

Waters and Wine-Licences, that Act appears to have been principally intended for regulating the Retail of these Liquors : And both of these Acts might naturally have been considered as Appendages of the Excise-Act ; which might probably have been the Reason why Preambles expressly denoting the Intent for public Uses, were not thought of, in the framing of these Acts, as they had been, in the three former hereditary Acts of that Reign. The Title of the Act for Ale-Licences seems to denote that the Parliament expected some considerable Revenue from these Licences ; and yet no Preamble, expressing the Intent for public Uses, was inserted therein : But if any Doubt could have arisen from this Defect ; such Doubt is fully obviated by an express Clause inserted in this Act, restraining the Crown from charging this Revenue with any Gift, Grant or Pension.

It is allowed that the public Revenues of *Ireland*, in the Reign of King *Charles II*, previous to these hereditary Grants, were not sufficient to defray the public Expences. And it must also be allowed, that the Grants made to the Crown by the *Irish* Parliament in that Reign, were all hereditary. But it can scarce be imagined, that the King, at a Time when the private Revenue of the Crown was soon to be greatly augmented in this Kingdom, beyond what it had been in former Reigns, by the Quit-Rents to be reserved out of the *Irish* Forfeitures ; and at a Time, when the public Revenues of this Kingdom fell short of the public Expences ; it is utterly inconceivable that the King, at such a Time, attended with such Circumstances, could have entertained any Thought of demanding these hereditary Grants from the Parliament of *Ireland* for his own private Use ; without ever requiring, at any Time during his whole Reign, any Provision to be made for supplying the Deficiency of the public Revenues. And it is equally inconceivable

ceivable that the Parliament could, for such a Length of Time, have neglected all Care for supplying the Deficiency of the public Revenues ; and, instead of the necessary Supplies, take it into their Thoughts to make large Grants for augmenting the King's private Revenue, which were neither wanted nor asked. This alone, if there were nothing more in the Case, might be sufficient to determine the Construction of these Acts, in favour of public Uses. But when to this is added, that the Application made of the whole of these Revenues to public Uses, all along from the Time of these Grants, during the Residue of that Reign and long after, is full Evidence that they were neither demanded by the Crown nor intended by the Parliament for the King's private Use ; the Case will appear beyond all Possibility of Doubt.

It is objected, that as the *English* Excise was granted to King *Charles II*, in lieu of the Wards and Liveries of *England*, in which the King had a private Property ; the *Irish* Hearth-money was granted in lieu of the Wards and Liveries of *Ireland*, in which the King had the like private Property ; And that the Judges of *England*, in the *Exchequer Chamber*, in a Case, called, the *Banker's Case*, were of Opinion, that the Crown had a Right to alien this *English* Excise ; and certain Mortgages of it which had been made by King *Charles II* were, for that Reason, held valid.

In answer to this Objection, it may be sufficient to point out some material Differences between this *English* Act of Excise, and the *Irish* Hearth-money-Act : The two Cases will then appear so unlike each other, as not to bear an Argument of this Kind. In order to this Comparison, the Reader will find inserted at large, in the Margin, the several Titles and Preambles of these two Acts ; together with a Clause

in the Hearth-money-Act, restraining the Crown from charging that Revenue, with any Gift, Grant or Pension *.

In

* 12 Car. II. ch. 24. *English*. Intituled, An Act for taking away the Court of Wards and Liveries and Tenures *in Capite* and by Knights Service and Purveyance, and for setting a Revenue upon his Majesty in lieu thereof. This Act first abolishes the Court of Wards &c. and then proceeds in these Words.

“ Now to the Intent and Purpose that his Majesty, his Heirs and Successors may receive a full and ample Recompence and Satisfaction for the Profits of the said Court of Wards &c. Be it enacted, that there shall be paid unto the King’s Majesty, his Heirs and Successors for ever hereafter, in Recompence as aforesaid, the several Rates, Impositions, Duties and Charges herein after expressed.”

14. & 15 Car. II. chap. 17. *Irish*. (*viz.* the Hearth-money-Act) Intituled, An Act for establishing an additional Revenue upon his Majesty, his Heirs and Successors, for the better Support of his and their Crown and Dignity. “ For as much as nothing conduceth more to the Peace and Prosperity of a Kingdom, and the Protection of every single Person therein, than that the public Revenue thereof may be in some Measure proportioned to the public Charges and Expences; In Consideration thereof, and to the Intent and Purpose that his Majesty, his Heirs and Successors, may receive a full and ample Recompence and Satisfaction for the Profits of the Court of Wards, &c. be it enacted, &c. that for the Considerations aforesaid, from and after the 29th Day of September, in the Year of our Lord, 1662, every Dwelling and other House, &c. shall be chargeable, and by this present Act be and are charged with the annual Payment to the King’s Majesty, his Heirs and Successors, for every Fire-hearth, &c.”

Further enacted, “ That the Revenue arising by Vertue of this Act, shall not be particularly charged or chargeable, either before it be paid into the *Exchequer*, or after, with any Gifts, Grants or Pensions whatsoever: And that all and every Grant of any such Pensions shall be utterly void, and the Persons to whom such Grants shall be passed, shall be and are hereby made Accountants unto his Majesty, his Heirs and Successors, and shall pay back all Sums of Money received by Pretence of such Grant; and the Court of *Exchequer* is hereby enjoined to issue out Process accordingly.” Further enacted, “ That if any Person or Persons, Bodies Politic or Corporate, shall at any Time hereafter procure
“ or

In comparing these two Acts together, the following Differences are observable.

The Wards and Liveries of *England* were abolished by the same Act which granted the Excise in Exchange: The Wards and Liveries of *Ireland* were abolished by one Act; and the Hearth-money, granted by another. The Title of the *English* Excise-Act imports an Exchange of the old Revenue for the new: The Title of the *Irish* Hearth-money-Act hath no such Import; but seems to imply an Intention for public Uses. The Preamble of the former, denotes an Exchange of the one Revenue for the other, and nothing further: The Preamble of the latter, further denotes a clear and expresse Intention for public Uses. There is nothing contained in the *English* Excise-Act, which lays the Crown under any Kind of Restraint in the Disposition of that Revenue to private Uses; nor is there any Thing to be found in this Act, from the Beginning to the End, which can have the least Tendency to shew that the Revenue thereby granted was intended for public Uses: The *Irish* Hearth-money-Act not only expresses a full Intention for public Uses, in the Preamble; but also a clear Intention against private Uses, in the restraining Clause above mentioned.

Where

“ or accept of, from the King’s Majesty, his Heirs or Successors,
 “ any Pension, Gift or Grant for Years, Life or any other Estate, or
 “ any Sum or Sums of Money out of the Revenue arising by this
 “ Act, such Person or Bodies Politick or Corporate, procuring or
 “ accepting the same shall forfeit double the Value of such Pension,
 “ Gift or Grant, the one Moiety of which Forfeiture shall be to the
 “ Use of the Parish or Parishes where the said Offenders be or in-
 “ habit, the other Moiety to him that will sue for the same by Ac-
 “ tion of Debt, Bill, Plaint or Information.”

Where the Parliament grants a new Revenue to the King, in Exchange for an old one; such a Grant must be understood as intending the King the same kind of Property in the new Revenue, which he had in the old; unless something appears from the Words of the Grant, or Circumstances of the Transaction, which may amount to sufficient Evidence of a different Intention. Hence it is, that the *English* Excise-Act of King *Charles* II cannot be understood in any other Sense, than as granting the King the same Kind of Property in that Revenue, as he had in the Wards and Liveries of *England*; that is to say, a private Property. But where the Parliament grants a new Revenue to the King in Exchange for an old one, in which the King had a private Property; and, at the same Time, expresses a clear Intention, that the King should have nothing more in the new Revenue than a public Property; the Intention of the Legislature in this, as in all other Cases, must take Effect. There is no Inconsistency or Repugnancy in the King's Acceptance of a public, in Exchange for a private Property. Circumstances may be supposed, which might render an Exchange of this Kind adviseable in the Crown: And, in fact, there were such Circumstances at the Time of making our Hearth-money-Act. The King, in Compassion to the Poverty and unsettled Condition of *Ireland*, not then fully recovered from the Devastation of the civil War, thought fit to accept of a Grant of the *Irish* Hearth-money, for public Uses; in Exchange for the Revenue of the Wards and Liveries of *Ireland*, which was his private Property, and, by Abuses of Officers, had become very grievous and oppressive. And, in Effect, the King's private Income was not lessened by this Exchange; he having before supplied the Deficiency of the public Revenues of this Kingdom, out of his private Revenue.

If

If there were nothing more in our Hearth-money-Act, than the restraining Clause before mentioned; in the framing of which, great Care and Caution appear, in order to render the Restraint effectual; that single Clause might be sufficient to denote a clear Intention against private Property. Such a Restraint is utterly inconsistent with a Property which necessarily implies a Power to dispose of the Thing, and the Income of it, to whatsoever Uses (not injurious to the Public) the Proprietor thinks fit. It is not to be conceived that a Parliament which thought proper to lay the King under such a Restraint in the Disposition of the annual Income of this Revenue, could, at the same time, have intended that he should have a full and unlimited Power of aliening the whole of it, in Perpetuity, from the Crown, at any Time, to any private Person, or for any private Consideration he should think fit.

The Duties which are specially appropriated to particular Uses, are all granted to his Majesty, his Heirs and Successors, for the respective Terms of Years mentioned in the several Acts. The Duties so appropriated are those granted for Encouragement of the Linen Manufacture, the In-land Navigation, the Cambrick Manufacture and the Protestant Schools. Although these temporary Duties be granted to the King, his Heirs and Successors; it is allowed that he hath nothing more in these Duties than a public Property, to be applied to the public Uses particularly mentioned in the Grants: And it ought, for the same Reason, to be allowed, that although the hereditary Duties be granted to the King, his Heirs and Successors; yet he hath nothing more in them than a public Property, to be applied to the public Uses of the Kingdom at large. In the one Case there is a special, and in the other, a general

ral Appropriation. The Revenues are equally vested in the Crown, in both Cases; and the King has the same executive Power in both; with this Difference only, that in the one Case, the Revenue is to be applied to particular Uses of a public Nature, specially mentioned in the Grant; and in the other Case, the Revenue is to be applied to such public Uses as the King shall think fit: But this can make no Difference in the Nature of his Property: His Property is equally limited to public Uses, in the one Case as in the other. In the Case of the special Appropriation, the King's Property is limited to particular public Uses; because the Grant is so expressed: And in the Case of the general Appropriation, his Property is limited to public Uses at large, for the same Reason; to wit, because the Grant is so expressed or appears to have been so intended. The Intention of the Legislature is the Substance of the Act, and, by the settled Principles of Law, is equally to be regarded and adhered to; whether it appears from express Words, or from the Nature and Circumstances of the Case.

The Point of Property in a Revenue granted by Parliament to the Crown for public Uses, could never come to be judicially determined in a Court of Justice; without some previous Instance of the Crown's aliening such a Revenue: but no such Instance appears. The Consequence is, that this Point is to be judged of, solely by the Principles of Law: And, upon those Principles, the Point can admit of no Doubt; it being a settled, universal Rule of Construction, in all Courts, both of Law and Equity, a Rule without Exception, that all Acts of Parliament are to be construed according to the Intention. There is no Principle of Law more fully settled, or more strictly adhered to, than this. But to say that the Parliament, in granting a Revenue to
the

the Crown for Public Uses, intended the Crown a private Property and Right of Alienation; is, in other words, to say, that a Revenue granted for public Uses, was granted for private Uses.

The Rule of Law, that the Property of the Crown is not to be affected by general Words in an Act of Parliament, is but a Branch of the Rule of Intention; and relates only to such Property as the Crown had antecedent to, and independent of the Act to which this Rule of Construction is applied: To apply it to a new Property claimed under the Act, would be a Begging of the Question.

The several Parliamentary Grants above-mentioned, comprehend all the Branches of the hereditary Revenue that are considerable; excepting the Quit-Rents and Crown-Rents; and in these, the Crown originally had a private Property: For although the Quit-Rents were ascertained in pursuance of the Acts of Settlement and Explanation; they were not granted by either of these Acts. The King was intitled to the forfeited Lands, as his private Property; and consequently had the same Kind of Property in the Rents thereout reserved; as nothing appears in the Act of Settlement or Explanation, or in the Circumstances attending that Transaction, to shew a contrary Intention. But by a Clause in an Act made in *England* in the 11th and 12th of *William* the III ch. 2 Sect. 25, the Quit-Rents and Crown-Rents were appropriated to the Public Uses of this Kingdom. The Words of this Clause are inserted at large in the Margin. *

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* All which Quit-Rents, Crown-Rents and Chiefries, and all other the Quit-Rents, Crown-Rents and Chiefries belonging to the said Crown of *Ireland* on the said 13th Day of *February* 1688, shall forever hereafter remain and be for the Support and Maintenance of the Government

The several above mentioned Branches of the Hereditary Revenue, at a Medium of two Years ending at *Lady-Day* 1753, amounted to Five Hundred and fourteen Thousand one Hundred and forty two Pounds, fifteen Shillings and a Penny Farthing Yearly ; and are more than two thirds of the whole Public Revenue of this Kingdom. The other Branches of the Hereditary Revenue are, Prifage on Wines, Light-House-Duties, and the casual Revenue ; not amounting in the whole to Ten Thousand Pounds a Year. Prifage on Wines is a Revenue belonging to the Crown by the common Law, independent of all Parliamentary Grants ; and is therefore the King's private Property. The Cafe is the fame, with respect to a small Part of the Casual Revenue ; which alfo belongs to the Crown by the common Law, independent of Parliamentary Grants : But the greatest Part of the Casual Revenue is grounded on the Revenue-Acts, and is therefore public Property, vested in the Crown for public Ufes. The several Branches of this Casual Revenue, and the Light-House-Duties, are too inconfiderable to be diftinctly treated of.

If the whole Hereditary Revenue where the King's private Property ; the Public Expences must be fupposed to have been paid out of the temporary Revenue, as far as that Revenue could extend ; and the Deficiency must be fupposed to have been made up, by the King's Favour and Indulgence, out of the hereditary Revenue : The Confequence of which would be, that the whole

Government of the faid Kingdom of *Ireland*, and fhall be and are hereby enacted and declared to be Unalienable ; and all Grants, Charges and Incumberances fince the faid 13th Day of *February* made, or at any Time or Times hereafter to be made of the fame, or any Part thereof, or wherewith or whereby to affect, charge, or incumber the fame or any Part thereof with any Annuity, Pension, Rent, Debt, Sum or Sums of Money, Charge or Incumberance whatfoever ; fhall be, and are hereby Enacted and Declared to be Null and Void to all Intents and Purpofes whatfoever.

whole Redundancy of 1753 arose out of the King's private Revenue.

On the other Hand, if the King hath no private Property in any Part of the *Irish* Revenue, whether Hereditary or Temporary, excepting some small Branches of the Hereditary, not amounting, at the most, to 10000*l.* Yearly; this private Revenue must be supposed to have been applied, as far as it could extend, to such of the Pensions as are of a private Nature; to wit, those not grounded on Public Services, but meerly proceeding from Royal Bounty: The Consequence of which is, that the whole Redundancy of 1753 arose out of the Public Revenue, vested in the Crown for Public Uses; and no Part of it, out of the King's private Revenue.

If the Pensions meerly proceeding from Royal Bounty, had not exhausted the whole of the King's private Revenue; his Majesty would have had a private Property in some small Part of the Redundancy: But, even upon this Supposition, his private Property could not have been, in any Degree, affected by the Bill of 1753; because much more was to have been left in the Treasury, unapplied by that Bill, than such private Property in the Redundancy could possibly have amounted to. Some indeed have argued, that the King's private and public Money being blended together in the Treasury, in one aggregate Mass; some Part of his private Money might happen to be included in every Payment made out of the Treasury. But this Argument hath no weight; it being very clear, in the case of Money, that the Value alone, and not the Indentity, is to be regarded. A Banker who receives Money for safe Custody, and mixes the Money of different Persons together, so as not to be distinguished, doth not hurt the Property of any of the Owners; provided he commits no Mistakes in Point of Value.

So it is, in the Case of a Receiver of Rents for different Persons ; and in Case of Collectors and Treasurers of the King's public and private Revenues.

I shall now take the Objections which have not fallen in my way before, into Consideration.

It is objected that the Lands of the Religious Houses, dissolved in the Reign of King *Henry* the VIII, were vested in the Crown by Acts of Parliament ; and yet the Validity of the Alienations made of these Lands by the Crown, was never disputed,

This Objection may be thus answered. From the Manner in which these Acts are worded, the Parliament appears to have considered the King as entitled to the Lands of those Religious Houses, by Virtue of the Surrenders which they had previously made to him : Therefore these Acts of Parliament can be considered in no other Light, than as Confirmations of the antecedent Surrenders ; and as intended to vest the actual Possession in the King, without going through a troublesome Form of Law, called an Inquisition of Office, which would otherwise have been necessary in order to put the King into Possession, although his Title were ever so clear ; which Form was rendered unnecessary in that Case, by an express Clause inserted in each of these Acts.

Supposing the Right of King *Henry* the VIII, as it stood upon the Surrenders, to have been doubtful ; it cannot be denied that he claimed such a Right : It appears from the first of these Acts which was made in each Kingdom, that he had previously made Alienations of Part of those Lands, in both Kingdoms ; and Clauses are inserted in the Acts, to confirm these Alienations : But where the Crown claims a Right, in point of private Property, and an Act of Parliament

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is made to confirm such Claim; it cannot be thought that the Parliament, in the making of such an Act, could have had any Intention to change the Nature of the Claim, from a private to a public Property; where no such Intention appears from any thing contained in the Act, nor from the Circumstances attending it.

The Act of 10th *Henry* the VII. chap. 4, commonly called *Poyning's Act*, hath been objected, on the Point of previous Consent: But it is very clear that *Poyning's Act*, as explained by the Act of 3d and 4th *Phil. and Mar.* chap. 4, lays the Parliament under no kind of restraint in proposing Heads of Bills, in any Case whatsoever.

It is objected, and much relied on, that the Opposition of 1753 was unnecessary; because a Precedent in that Session could have had no greater Effect in altering the Law, than the like Precedent in 1751. To this it may be answered, that Precedents, especially where they are modern, have great Influence in Decisions of all kinds; and although they can not alter the Law, yet they have often induced the ablest and wisest Men, to determine Questions of Law, contrary to their private Opinions; and, after being twice or thrice repeated, generally prevail: That as the Weight of Precedents increases, in proportion to their Number, the Precedent of 1751 rendered the Opposition to that of 1753, the more necessary: And that if the Bill of 1753 had passed, with the Recital of previous Consent, after that Recital was put upon the Foot of Prerogative and was insisted on as a Right; such a Precedent, attended with such Circumstances, might, with great Strength of Reason, have been urged upon any subsequent Occasion, as a Parliamentary Acknowledgement of the King's private Property in the Redundancy, and consequently in the hereditary Revenue; the previous Consent, by the Usage of Parliament, not being requisite

site in any Case, but where the King's private Property is concerned.

Some have objected that only two of our hereditary Revenue-Acts, to wit, the Hearth-Money-Act and the Act for Ale-Licences, contain a Clause against Gifts, Grants and Pensions; and that the inserting of this Clause in these two Acts, shews that the King hath a Right to apply the other hereditary Grants, to private Uses, where this Clause is omitted; otherwise, the inserting of it in these, would have been unnecessary.

In Answer to this Objection, it might be sufficient to mention, what is well known to Gentlemen of the Law, that unnecessary Clauses are often to be met with, in Acts of Parliament. Such Clauses are sometimes inserted, to render the Intention clearer; and sometimes they are inserted, meerly to satisfy Scruples of Gentlemen not educated in the Study of the Law. But this Objection admits of, this further Answer.

Although the Intention of the Legislature, in the Hearth-Money-Act and the Act for Ale-Licences, would have been sufficiently clear, in favour of public Uses, supposing the Clause against Gifts, Grants and Pensions had been omitted; yet this Clause, as it is framed, is far from being useless; for it enacts that the Persons to whom such Grants shall be made, shall pay back all Sums of Money received by pretence thereof; and it impowers the Court of Exchequer to issue Process for that purpose; which could not otherwise have been done, without a Judgment annulling the Grant. This Clause in the Hearth-Money-Act is of further Use, in rendering penal, the Acceptance of any Gift, Grant or Pension, out of that Revenue; such acceptance being thereby punished, by a Forfeiture of double Value. The private Revenues of the Crown were much more than sufficient to satisfy the

the Pensions; until the Wards and Liveries were abolished: And therefore, till then, no Clause against Pensions was ever thought of, in framing any of our hereditary Revenue-Acts. But as the Profits of the Wards and Liveries had been mostly disposed of by King *Charles* the II among Court Favourites; the Parliament, in framing the Hearth-Money-Act, might naturally apprehend that the Persons who were to suffer by abolishing the Wards and Liveries, would probably solicit the King for Recompence, out of the Revenue granted in Exchange: And nothing more effectual than this Clause could have been devised, to prevent all such Solicitations. Besides, as the Hearth-Money was granted in Exchange for a Revenue in which the King had a private Property; the Parliament, in framing this Act, had greater Reason to guard against a Misconstruction, with respect to the point of Property, than they had in framing any other of our Hereditary Acts.

After this Clause against Pensions had been once thought of; it was judged adviseable to be continued in the only subsequent Revenue-Act of that Session, to wit, the Act for Ale-Licences; the rather, as that Act contained no Preamble, expressing the Intent for Public Uses. After that Session, there was no Hereditary Revenue-Act made in this Kingdom; excepting the Act for Strong Waters and Wine-Licences; the Revenue whereof was too inconsiderable, for an Object of public Attention. It appears both from the Title and Preamble of this Act, that regulating the Retail of these Liquors was the Object in contemplation, upon that Occasion; as hath been before observed.

It is further objected, that the Redundancies of the ancient Subsidies in *England*, and of the modern Civil-List-Duties there, were never accounted for, in
Parliament;

Parliament; and must therefore have been regarded as the private Property of the Crown.

In Answer to this Objection, so far as it regards the ancient Subsidies, it may be sufficient to observe that the private Revenues of the Crown, in ancient Times, having been very large; divers Kings there-out amassed, from Time to Time, great Treasures; which they generally disbursed in defraying the Expences of War; *England*, in those Times, from the Smalness of her Trade and Scarcity of Money, being frequently not well able to afford Subsidies large enough to answer these Purposes. Hence, no Redundancies of these ancient Subsidies, at least nothing worthy of a Parliamentary Inquiry, could ever have fallen under Contemplation.

As to the Civil-List-Duties, they are granted to make up a certain annual Sum, chiefly for the King's private Use; and it is very true, the Redundancy is never enquired into; and therefore seems to be considered as the King's private Property: But the natural Inference is, that such was the original Intention of the Grant: The Grant may bear this Construction, and Usage hath so explained it. A certain annual Sum is mentioned in the Grant, to be made good at all Events, in case of any Deficiency: And the Act being silent, with respect to the Uses of any casual Redundancies; such Redundancies are considered as intended in Augmentation of the Grant.

The Subsidies of Tunnage and Poundage, which were the ordinary Subsidies of ancient Times, stand much upon the same Footing with the modern Civil-List-Duties, as to the Point of Redundancy: For these ancient Subsidies having been always granted, not for public Uses at large, but for special Uses,
particularly

particularly mentioned in the Grant, to wit, " For
 " the Keeping and Safeguard of the Seas, and for
 " Intercourse of Merchandize safely to come into
 " the Realm, and safely to pass out of the same * ;
 there might possibly have been Redundancies in that
 Case, as there are in the Case of the Civil-List-Duties :
 But as a Redundancy of any Revenue granted by Par-
 liament, can properly mean nothing more than a
 Surplus of such Revenue remaining in the Treasury,
 after the Purposes for which the Grant was made
 are fully satisfied ; it follows from thence, that
 where a Revenue is granted for public Uses at large,
 as is the Case of our hereditary Revenue ; although
 there may be Ballances remaining from Time to
 Time in the Hands of the Treasury-Officers ; which
 Ballances are called Redundancies, in respect of the
 ordinary Establishment ; yet there never can be any
 Redundancy of such a Revenue, with respect to the
 Purposes of the Grant, whilst any public Uses can
 be thought of, for the further Improvement of the
 Kingdom : Consequently, admitting the Law to be
 as is contended for, from the Instances of the ancient
 Subsidies and the modern Civil-List-Duties ; to wit,
 That where a Revenue is granted for particular
 Uses, or to make up a certain annual Sum, the
 Crown hath a private Property in the Redundancy,
 after those Purposes are satisfied ; yet this Doctrine
 hath no Influence upon the present Question ; nor
 can it, at any Time, come to be of any practical
 Use, with respect to the Application of any Part of
 our public hereditary Revenue ; unless it can be sup-
 posed that this Kingdom may, at some future Time,
 arrive to such a Degree of Perfection in Agriculture,
 Manufactures and Trade, as that no public Expence
 can be devised for its further Improvement.

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* 4 Inst. 33.

There is one Objection still remaining, which ought not to be omitted. It is said that our Acquiescence in the Pensions, without Complaint or Remonstrance, indicates the Sense of the Nation upon the Point of Property. And it must be admitted that this Acquiescence, at first Sight, carries a Complexion of that Kind: But it will appear in another Light, when Facts and Circumstances are attended to. The Truth is, this Point of Property was never an Object of public Attention, scarce a Subject of private Conversation; until the Business of previous Consent introduced it. Nor is this, in any Degree, to be wonder'd at. The private Revenue of the Crown was more than sufficient to discharge the Pensions, until the Quit-Rents and Crown-Rents were appropriated to public Uses; which was not done 'till the latter End of King *William's* Reign; as hath been before observed. During the Reign of Queen *Anne*, our Minds were filled, and the public Attention disturbed, by the dreadful Apprehensions of a Popish Pretender. After the Accession of his late Majesty, a Rebellion quickly ensued. When that was quelled, we looked back with Horror upon the Danger we had escaped; but our Joy rose in Proportion, and our Gratitude to our Deliverer. From that Time to this, our Sentiments of Loyalty have been extending their Root, still deeper and deeper in our Minds. Our Experience of the Virtues of our Sovereigns in the late and present Reigns, their Moderation, Humanity, Valour, Love of Justice, close Attention to public Business and constant Care for the Good of their People, our continued Experience of these distinguishing Virtues, not less eminent in Degree than amiable in Kind, hath been continually adding Strength to our Loyalty, Gratitude and Affection; insomuch, that I doubt whether there is, or ever was a Nation more strongly attached to the Person or Family of any Prince, than the Protestants

testants of *Ireland* are, to the Person of his present Majesty and his Illustrious House. When these Circumstances are attended to, it will not appear strange that the Rights of the Crown in pecuniary Matters, since the Reign of King *William*, were not minutely inquired into; until such Inquiry was rendered necessary, by the late Question of previous Consent. And although this Inquiry be now set on Foot; we have no Reason to apprehend, that the Pensions upon the *Irish* Establishment, whether they be considered as Rewards of public Services or as meer Acts of Royal Bounty, will ever afford any just Matter of Complaint. Such Acts of Bounty, have been always regarded as suitable to the Honour and Dignity of the Crown: And we are bound by all the Ties whereby a Nation can be bound, to contribute to the utmost of our Power, in supporting the Crown in his Majesty's Illustrious House, with all Dignity and Honour.

I have mentioned all the Objections I have met with, in Writing or otherwise, that seem to be worthy of any Notice. And in answering the Objections, as well as in treating of the Subject at large, I have endeavoured to avoid all Expressions which might seem opinionative or dogmatical: If any such have dropt from me unawares; I hope the Reader will consider that a Fault of this Kind is the less blameable, where a Man is writing in his Profession; and that this Fault is difficult to be wholly avoided, where the Matter appears quite clear to the Writer. Besides, where the Law is clear, as it is in most Cases, a Man of that Profession ought, in Point of Candour, to express himself in such a Manner, as may denote that the Point admits of no Doubt.

Before we part with this Subject, it may not be improper to take a short View of its Importance.

If the Doctrine of private Property in the hereditary Revenue, should be received; that Revenue might, and probably would, in some future Times, be misapplied by bad Ministers, in support of unconstitutional Measures, to answer their own private Purposes: The Consequences which might justly be apprehended in both Kingdoms, from so large a Revenue so misapplied, need not be mentioned. On the other hand, if this Doctrine be rejected; it is easy to foresee the public Benefits, which may reasonably be expected to follow.

A Spirit of Manufactures is growing in this Kingdom: But our Poverty is such, as frequently renders public Aid necessary to the Introducing and Establishing of new Manufactures; and useful in supporting the old. More than one half of this *Island* is almost a Desert, as Nature left it, without Tillage and without Inhabitants: But Inhabitants can never abound, without Tillage; nor Tillage prevail, without Water-Carriage. There is scarce any Country more capable than this, of Improvements in In-land Navigation and Harbours: But such Improvements can not be effected in a Country so circumstanced as this, otherwise than by public Money. Possibly not one half of the Money so granted, would be properly applied; But the Money would be still expended in the Kingdom; and the Purposes of the Public would be answered in the End. I have, indeed, heard it Objected upon such occasions, that some particular Persons are to be the principal Gainers: But this is a most shameful Objection; being an Admission in the Person who makes it, that he chuses to prevent a public Good, of which he himself must, in common with others, be a Partaker; rather than to have his envious Mind disturbed, by seeing some other Person a greater Gainer than Himself. The Folly of this is glaring.
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There never was, nor ever can be any public Improvement, which is not liable to the same Objection. The present Redundancy of the public Revenues is large; and future Redundancies may be considerable. If such Sums were applied in promoting the Agriculture, Trade and Manufactures of *Ireland*; what Wealth must be thereby added to these Kingdoms, and what Strength to his Majesty's Arms, both by Sea and Land?

I would not be understood to insinuate, that the whole of these Redundancies ought, at all Times, to be applied to the peculiar Exigences of this Kingdom. If we ever become able to afford Subsidies towards extraordinary Exigences of *Great-Britain*; we are bound by the Ties both of Nature and Interest, to contribute such Subsidies, when requisite, to the utmost of our Abilities. We and they have much the same Laws, quite the same Language, the same Religion and the same Prince: By original Descent, Inter-marriages and Family-Connexions, we are in reality the same People: And although Nature hath not quite united the two Countries; surely no rational Man can take it into his Head to think, or his Heart to feel, that ten or twenty Leagues of Water dividing the Soil, can have any just Effect, in alienating the Affections. The old Notion of a separate Interest, is long exploded. The growing Intercourse between the two Kingdoms, hath already rendered *Ireland* less disunited from the grand Metropolis, than many of the distant Counties of *Great-Britain*: And it is now universally understood, that *Ireland* is not only protected by the Power of *Great-Britain*, but in some Degree partakes of her Wealth; and that the Wealth of *Ireland*, be it great or small, will always center in *Great-Britain*.

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The Question of previous Consent is, in itself, a Question of no small Moment: And taking it as connected with the Point of Property in the hereditary Revenue, it is a Question of such Importance, as fully convinces me that the Doctrine of previous Consent could never have been espoused by so many Gentlemen of Worth, if it had been rightly understood. To inquire on which Side the Superiority lies, in Point of private Merit, would be endless and useless. Public Policy requires the Constituents, ever to prefer and reward public Merit. Yet it must be admitted, that when a Representative of undoubted Integrity in his private Character votes on the wrong Side, though in a Question of national Importance, and afterwards acknowledges his Error; his private Merit cannot but have Weight, in satisfying the Constituents of his Sincerity: Especially, if the Question was new, and quickly determined, and attended with seeming Difficulties. It must also be admitted, that when Competitors appear equal in public Merit; private Merit ought to prevail: When they appear so, in Merit of both Kinds; perhaps Superiority in Fortune may properly determine the Choice; as it usually renders the Proprietor less open to Corruption, and attaches him more strongly to the national Interest, in which he hath a larger Share.

The parliamentary Conduct of the Representatives, is the proper Test of their public Merit. To derogate from Merit of this Kind, by Conjectures touching the inward Motives and Purposes of Men, is uncharitable, ungenerous and ungrateful. Such Conjectures have a direct and immediate Tendency, to destroy all Distinction between parliamentary Merit and Demerit: And if this Distinction were destroyed, the Constitution, in all Probability, could not long survive it: But if this important Distinction be properly

perly regarded by the Constituents; if they adhere to the Interest of their Representatives, so long as the Representatives adhere to the true Interest of their Country, and no longer; unconstitutional Measures, although they may possibly prevail for a Time, will always be frustrated in the End. Public Spirit in the Constituents, can never fail to encourage and promote a suitable Conduct in the Representatives: Therefore, to preserve and increase that Spirit in the Constituents, by all lawful Means, at all Times, under all Changes of Men or Measures, ought to be the peculiar Care and Study of every Lover of the Constitution.

It must, at the same Time, be admitted, that Public Spirit often degenerates into Licentiousness; especially in the low People; sometimes, in Persons of higher Rank. But this is an Abuse of a most useful Thing; a Disease, not arising from any Defect in the Constitution, but from the Errors and Vices of Men; therefore, never to be wholly cured; although it may be checked by Men of Knowledge and Virtue, active in promoting a Spirit of Reverence for the Laws, Submission to public Justice, and due Respect for Government. All Ranks of Men in whom the Constitution hath reposed public Trust, are required, by the same Constitution, to execute such Trust, with public Spirit; otherwise, the Purposes of the Trust can not be answered. This is a Truth, self-evident and universal; equally extending to the Trust reposed in the Constituents; as to That, committed to the Representatives: The former is the Basis of Liberty; and, if removed or diverted from its Uses; Liberty must fall, and arbitrary Power be established in its Stead. The Spirit of Liberty may exceed: It may be inflamed into Mobs and Riots, in People of low Rank; and heated into Excesses of another Kind, in those of superior Degree. And
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this licentious Spirit may possibly, upon some particular Occasions, infect aggregate Bodies of Men to so exorbitant an Height, as may perhaps break out into arbitrary, unconstitutional Acts of lawless Power, under the Disguise of regular, constitutional Proceeding; and these illegal Acts of licentious Power may perhaps be very grievous, injurious and oppressive in themselves, dangerous in their Consequences, and shameful in the Eyes of our Fellow Subjects; highly to be lamented by every Man, who hath either the Welfare or Honour of his Country at Heart; to be deplored by every Man, who hath any just Regard to the free Administration of public Justice, or to the Security of private Property; by every Man, who hath any Respect for the sacred Rights of the Crown, any Sense of the high Sanction of the Laws, or the smallest Degree of Reverence for the transcendent Dignity of legislative Power: Yet we cannot thence infer, that the Spirit of Liberty ought to be discouraged. The true Constitutional Spirit of Liberty implies a warm, generous and active Love of it; and a vigorous and steady Pursuit of all Constitutional Means, for preserving it; still temper'd with due Reverence for Majesty; just Regard to the Prerogatives of the Crown, and full Submission to the Powers derived from it; the most inviolable Attachment to Monarchy, as it stands most wisely limited (that inestimable Part of our Constitution, which preserves us from a Tyranny, not less dreadful than Despotism itself) and the highest Honour for the Laws as supreme, equally binding every Branch of the Legislature as the meanest Subject of the Realm, quite beyond the rightful Power of any one Branch, directly or indirectly to control them. This is public Spirit; the true Spirit of Liberty: a Spirit, which gladdens the Heart, invigorates the Mind, and dignifies our Nature: a Spirit, raised and conducted, not by the rash, giddy, blind
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Rage of licentious Enthusiasm ; but by the cool, deliberate and stable Dictates of Reason : A Spirit, which calmly, boldly and steadily opposes every Measure, whether Popular or Ministerial, tending, in any degree, to impair our matchless Constitution : A Constitution, not to be parallel'd, in the History of ancient Times ; far surpassing all foreign Policy of the Modern : A Constitution, the peculiar, the distinguishing Happiness, the Pride, the Glory of these Nations ; and the Envy of the rest of the enlighten'd World. To check this Spirit, must naturally tend to transform our Constitution, into an arbitrary Government, of the one kind or the other : But the temporary Inconveniencies which attend the ordinary Excesses of our constitutional Liberty, or the casual Grievances and Dangers attending the extraordinary, are not to be compared with the certain, permanent and dreadful Miseries of established Slavery.

It is objected, and must be allowed, that public Spirit in the Constituents is often misguided and perverted by designing Men, to answer bad Purposes : But Abuses are not to be admitted as Objections. Tools of Faction, under the Disguise of Public Spirit, may mislead the Constituents ; and so perhaps may Heads of Faction, under the same Disguise, mislead the Representatives : Yet it can not, with any Colour of Reason, be thence inferred, that public Spirit ought to be discouraged in either. The best Things, Religion itself, are often preverted to the worst Purposes. Public Spirit, Liberty of Judgment and Freedom in choice, notwithstanding their Abuses, must be preserved ; otherwise, blind, implicit Faith, and her inseparable Companion, arbitrary Power, will naturally and necessarily succeed. The Trust reposed in the Constituents is the grand Pillar of the Constitution, the Bulwark against arbitrary Power. The Constituents, like other Men, are liable to Error ; to

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be circumvented by Art, and deceived by Falshood ; nevertheless, it is their indispenfable Duty to execute this moft important Truft, with a Fidelity guided and animated by public Spirit, according to the beft of their Judgments, upon the full eft and beft Information that they have Opportunities of acquiring ; otherwife, they are Enemies to Liberty ; Betrayers of their Truft ; falfe to themfelves, their Families and their Country.

I would not be underftood, in general, to commend Party-diftinction. Such Diftinctions are always attended with perfonal Competitions, Animofities, Rioting and Neglect of Bufinefs ; often with Scurility, Licentiousnefs, Sedition and popular Tumult. Nevertheless, they are fometimes advifeable, nay unavoidably neceffary, in particular Cafes : For inftance ; a conftitutional Queftion falls under the Confideration of Parliament : A great Majority of the Conftituents happens to be, in Opinion, againft the minifterial Side : Minifterial Influence, in all appearance, muft prevail ; if not counterballanced by open and public Demonftration of the general Senfe of the People : Such Demonftration can not effectually be given, without Party-diftinction. In fuch a Cafe, the popular Side can not but think fuch Diftinction, the neceffary Means of preferving the Conftitution intire.

When a Diftinction of this Kind, is thus founded ; Circumftances may happen to concur, which may render it neceffary to be continued, after the original Occafion thereof ceafes. For Inftance ; a minifterial claim is made, in fupport of the minifterial Side of the Queftion : This Claim is enter'd in the proper Journals ; and fo remains on Record ; exprefsly oppofing a conftitutional Privilege of the Commons ; and, by neceffary Inference, greatly affecting public Property ; contrary to the general Senfe of the Nation ; No Declaration of this national Senfe, with refpect to
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either of these Matters (the Privilege or the Property) is enter'd in the Journals of the Commons; nor any such explicate Declaration, made; by way of declaratory Vote, Address or otherwise: This ministerial Claim is of such a Nature, as to have its full Effect; so long as the Commons forbear, not only a Declaration of the national Sense, but also the Exercise of the Privilege which this Claim opposes: An intire Session passes, or is likely to pass, without any such Exercise or Declaration: This Forbearance is, or may be construed, an Acquiescence: This Acquiescence is daily acquiring Strength, from Length of Time: In the mean Time, there happens to be an uncommon Redundancy of public Money; which may possibly enlarge the Means of extending ministerial Influence. Under such Circumstances, those who think the Claim unconstitutional, cannot but think the Party-distinction necessary to be continued; as the only visible Means of preserving or restoring the Constitution. One Concession, upon this Head, may readily be made: Men who are conducted by public Spirit, if they have Sense and Temper, never enter into, nor continue in such Distinctions; but from Necessity, and with Reluctance; with Moderation, Charity and universal Good-will.

Although I be, in the present Situation of political Matters, an Approver of Party-distinction, and of all constitutional Measures for continuing and strengthening such Distinction; all lawful Means of increasing and animating, not inflaming, the popular Side; and every proper Method of conveying the popular Sense, to the Representatives of the People; whether the same be done (after the Manner of ancient Times) by Conference, or (according to the modern Usage) by Letter; yet I can, with Truth, assure the *Reader*, that my Attention to the Subject of this Paper did not proceed from Party-Attachment; having never

ver had any such, to any Leader, of any Side : Always weighing the Measure ; not, the Man. This Attempt to cast some additional Light upon a national Question, hath no other Source but a sincere Love and just Admiration of our envied Constitution, and an earnest Desire that the same Constitution may be transmitted intire, to our latest Posterity.

F I N I S.

